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Attorneys for Complainant  
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7

8 **BEFORE THE**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation) NO. AC 98-11  
Against: )  
11 )  
LYNELL R. COLBERT aka ) AMENDED  
12 LYNELL PAYNE ) DEFAULT DECISION  
382 N. Lemon Drive, Suite 292 ) AND ORDER  
13 Walnut, CA 91789 ) [Gov. Code §11520]  
 )  
14 Certified Public Accountant)  
Certificate No. 47066 )  
15 )  
Respondent.  
16  
17

18 Service having been obtained by certified mail on  
19 respondent Lynell R. Colbert at the latest address filed by  
20 respondent with the Board of Accountancy, in compliance with  
21 sections 11505(a) and 11505(c) of the Government Code, and  
22 respondent having failed to file a Notice of Defense within the  
23 time allowed by section 11506(a) of the Government Code, the Board  
24 has determined that respondent has waived the right to a hearing to  
25 contest the merits of the Accusation in accordance with sections  
26 11506(b) and 11520 of the Government code. Accordingly, the Board  
27 makes the following findings of fact:



1 or certificate for unprofessional conduct.

2 c. Section 5100, subdivision (h), provides that  
3 unprofessional conduct includes, but is not limited to, fiscal  
4 dishonesty or breach of fiduciary responsibility of any kind.

5 d. Section 5100, subdivision (f), provides that  
6 unprofessional conduct includes, but is not limited to, wilful  
7 violation of the Accountancy Act or any rule or regulation  
8 promulgated under the authority granted by the Accountancy Act.

9 e. Section 5050 of the Code prohibits the practice of public  
10 accountancy without a valid permit issued by the Board.

11 f. Section 5055 of the Code prohibits the use of the title  
12 of "CPA" by anyone not holding a certificate of certified public  
13 accountant issued by the board or a valid permit to practice public  
14 accountancy.

15 4. Respondent has subjected her license to discipline  
16 under the above sections of the Code in that:

17 a. On April 24, 1996, by written agreement, respondent,  
18 operating under the name "Colbert & Associates, Certified Public  
19 Accountants," agreed to perform an annual audit for Famous Sam's  
20 Group, Inc. f/k/a U.S. Flywheel Systems, Inc., for the fiscal year  
21 ending December 31, 1995. Respondent submitted invoices for and  
22 was paid \$5,900.00, but never issued a final audit report.  
23 Respondent also failed to cooperate with the successor auditor,  
24 causing Famous Sam's Group, Inc. to incur additional fees of  
25 \$8,015.00.

26 b. On April 1, 1996, respondent borrowed \$6,000.00 from  
27 Wendel L. Eckford, a client for whom respondent had prepared 1995

1 individual tax returns. The stated purpose of the loan was to  
2 invest in a real-estate venture and respondent agreed to pay back  
3 the loan within 30 to 60 days. Respondent repaid the loan with  
4 checks that could not be honored due to insufficiency of funds in  
5 her account.

6 c. Respondent conducted the practice of public accountancy  
7 under the fictitious firm name, "Colbert & Associates, Certified  
8 Public Accountants," without maintaining a full-time professional  
9 staff and during the period of the delinquency of her certificate  
10 after its expiration on October 1, 1995. Respondent had not  
11 requested nor received Board approval to use a fictitious name.

12 DETERMINATION OF ISSUES

13 Based upon the foregoing findings of fact, respondent has  
14 subjected her license to discipline under Business and Professions  
15 Code sections 5050 and 5055 by, holding herself out as a C.P.A. and  
16 practicing public accountancy while her certificate was in an  
17 expired status.

18 Respondent has further subjected her certificate to discipline  
19 under Business and Professions Code section 5100, subdivision (h),  
20 by failing to complete her audit engagement with Famous Sam's  
21 Group, Inc., and by using her position of trust and knowledge of  
22 tax client Wendel L. Eckford's financial affairs to solicit and  
23 secure a loan from the client that she later failed to repay.

24 Respondent has also subjected her certificate to discipline  
25 under Business and Professions Code section 5100, subdivision (f),  
26 by wilfully violating Title 16, California Code of Regulations,  
27 section 67, which prohibits the use of a fictitious firm name

1 without prior approval by the State Board of Accountancy.

2 Moreover, respondent has subjected her certificate to  
3 discipline under Business and Professions Code section 5100,  
4 subdivision (f), by wilfully violating Title 16, California Code of  
5 Regulations, section 66, which prohibits a certified public  
6 accountant from using a firm name which includes plural terms  
7 unless he or she maintains a full-time staff consisting of a  
8 licensee or employee as described in section 5053 of the Business  
9 and Professions Code.

10

11 ORDER OF THE BOARD OF ACCOUNTANCY

12 Certified Public Accountant Certificate number CPA  
13 47066, heretofore issued to Respondent Lynell R. Colbert, is hereby  
14 revoked. An effective date of September 23, 1998, has been  
15 assigned to this Order.

16 Pursuant to California Government Code section 11520(b),  
17 Respondent is entitled to make any showing by way of mitigation.  
18 Such showing, however, must be made in writing to the Board of  
19 Accountancy, 2000 Evergreen Street, Suite 250, Sacramento,  
20 California 95815, prior to the effective date of this Decision.

21

22 Dated and signed this 24 day of August, 1998.

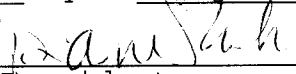
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\_\_\_\_\_  
President  
Board of Accountancy  
Department of  
Consumer Affairs

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Attorneys for Complainant

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	NO. AC-98-11
	)	
LYNELL R. COLBERT	)	<u>ACCUSATION</u>
382 N. Lemon Dr., Suite 292	)	
Walnut, CA 91789	)	
Certificate No. CPA 47066,	)	
	)	
Respondent.	)	

Complainant Carol Sigmann, as cause for disciplinary  
action, alleges:

1. Complainant is the Executive Officer of the Board of  
Accountancy ("Board") and makes and files this Accusation solely  
in her official capacity.

LICENSE STATUS

2. On January 30, 1987, the Certified Public Accountant  
Certificate No. 47066 ("the certificate") was issued by the Board  
to Lynell R. Colbert ("respondent").

The certificate expired and was not valid during the  
period of October 1, 1989, through November 21, 1989, for failure

1 to pay the renewal fee and for failure to provide a declaration  
2 of compliance with continuing education requirements.

3           On October 19, 1989, a renewal application was  
4 submitted to the Department of Consumer Affairs with the required  
5 fees but without the required declaration of compliance with  
6 applicable continuing education regulations. The Board's records  
7 reflect that the license renewal was "put on hold." This action  
8 resulted in the generation of a letter to the licensee notifying  
9 the licensee of a deficiency in continuing education. The  
10 certificate was renewed effective November, 22, 1989, through  
11 September 30, 1991.

12           The certificate expired and was not valid during the  
13 period of October 1, 1991, through October 24, 1991, for failure  
14 to pay the renewal fee and for failure to provide a declaration  
15 of compliance with continuing education regulations.  
16 The certificate was renewed effective October 25, 1991, through  
17 September 30, 1993.

18           The certificate expired and was not valid during the  
19 period of October 1, 1993, through December 28, 1993, for failure  
20 to pay the renewal fee and for failure to provide a declaration  
21 of compliance with continuing education regulations. The  
22 certificate was renewed effective December 29, 1993, through  
23 September 30, 1995.

24           The certificate expired and was not valid during the  
25 period of October 1, 1995, through May 29, 1996, for failure to  
26 pay the renewal fee and for failure to provide a declaration of  
27 compliance with continuing education requirements. The

1 certificate was renewed effective May 30, 1996, and is currently  
2 renewed through September 30, 1999.

3  
4 STATUTES

5       3.     Subdivision (b) of Business and Professions Code  
6 ("Code") section 118, provides that the suspension, expiration,  
7 or forfeiture by operation of law of a certificate, permit, or  
8 license does not deprive the Board of authority or jurisdiction  
9 to institute or proceed with disciplinary action against the  
10 certificate, permit, or license during the period within which  
11 the certificate, permit, or license may be renewed, restored,  
12 reissued, or reinstated.

13             Section 5070.6 of the Code provides that an expired  
14 certificate or permit may be renewed at any time within five  
15 years after its expiration.

16       4.     Section 5100 of the Code, provides that the Board may  
17 revoke, suspend, or refuse to renew any permit or certificate  
18 issued by the Board, or may censure the holder of any such permit  
19 or certificate for unprofessional conduct.

20             Section 5100, subdivision (h), provides that  
21 unprofessional conduct includes, but is not limited to, fiscal  
22 dishonesty or breach of fiduciary responsibility of any kind.

23             Section 5100, subdivision (f), provides that  
24 unprofessional conduct includes, but is not limited to, wilful  
25 violation of the Accountancy Act or any rule or regulation  
26 promulgated under the authority granted by the Accountancy Act.

27       5.     Section 5050 of the Code prohibits the practice of

1 public accountancy without a valid permit issued by the Board.

2 6. Section 5055 prohibits the use of the title of "CPA" by  
3 anyone not holding a certificate of certified public accountant  
4 issued by the board or a valid permit to practice public  
5 accountancy.

6 7. Section 66 of Title 16 of the California Code of  
7 Regulations prohibits an individual from using a firm name which  
8 includes plural terms unless he or she maintains a full-time  
9 professional staff consisting of a licensee or an employee or  
10 assistant.

11 8. Section 67 of Title 16 of the California Code of  
12 Regulations prohibits the use of a fictitious name without prior  
13 approval by the Board as not false or misleading.

14 9. Section 5107, provides in part that the Board may  
15 request the administrative law judge, as part of the proposed  
16 decision in a disciplinary proceeding, to direct any holder of a  
17 permit or certificate found in violation of section 5100,  
18 subdivisions (a) (b) (c) (h) (i) or (j), to pay to the Board all  
19 reasonable costs of investigation and prosecution including, but  
20 not limited to, attorney's fees.

21 FACTS AND STATUTORY AUTHORIZATION FOR DISCIPLINE

22 10. Respondent has subjected her CPA certificate to  
23 discipline pursuant to Code section 5100, as follows:

24 a. On April 24, 1996, by written agreement,  
25 respondent, operating under the name "Colbert & Associates,  
26 Certified Public Accountants," agreed to perform an annual audit  
27 for Famous Sam's Group, Inc. f/k/a U.S. Flywheel Systems, Inc.,

1 for the fiscal year ending December 31, 1995. Respondent  
2 submitted invoices for and was paid \$5,900.00, but never issued a  
3 final audit report. Respondent also failed to cooperate with the  
4 successor auditor, causing Famous Sam's Group, Inc. to incur  
5 additional fees of \$8,015.00.

6           b. On April 1, 1996, respondent borrowed \$6,000.00  
7 from Wendel L. Eckford, a client for whom respondent had prepared  
8 1995 individual tax returns. The stated purpose of the loan was  
9 to invest in a real-estate venture and respondent agreed to pay  
10 back the loan within 30 to 60 days. Respondent repaid the loan  
11 with checks that could not be honored due to insufficiency of  
12 funds in her account.

13           11. Respondent has subjected her certificate to discipline  
14 under Code sections 5050 and 5055 by, as detailed paragraph 10,  
15 holding herself out as a C.P.A. and practicing public accountancy  
16 while her certificate was in an expired status.

17           12. Based on the conduct described in paragraph 10,  
18 respondent has subjected her certificate to discipline under  
19 Business and Professions Code section 5100, subdivision (h), by  
20 failing to complete her audit engagement with Famous Sam's Group,  
21 Inc., and by using her position of trust and knowledge of tax  
22 client Wendel L. Eckford's financial affairs to solicit and  
23 secure a loan from the client that she later failed to repay.

24           13. Respondent conducted the practice of public accountancy  
25 under the fictitious firm name, "Colbert & Associates, Certified  
26 Public Accountants," without maintaining a full-time professional  
27 staff and during the period of the delinquency of her certificate

1 after its expiration on October 1, 1995. Respondent had not  
2 requested nor received Board approval to use a fictitious name.

3 14. Based on the conduct described in paragraph 13,  
4 respondent has subjected her certificate to discipline under  
5 Business and Professions Code section 5100, subdivision (f), by  
6 wilfully violating Title 16, California Code of Regulations,  
7 section 66, which prohibits a certified public accountant from  
8 using a firm name which includes plural terms unless he or she  
9 maintains a full-time staff consisting of a licensee or employee  
10 as described in section 5053 of the Business and Professions  
11 Code.

12 15. By the conduct described in paragraph 13, respondent  
13 has subjected her certificate to discipline under Business and  
14 Professions Code section 5100, subdivision (f), by wilfully  
15 violating Title 16, California Code of Regulations, section 67,  
16 which prohibits the use of a fictitious firm name without prior  
17 approval by the State Board of Accountancy.

18 OTHER MATTERS

19 16. Pursuant to Code section 5107, it is requested that the  
20 administrative law judge, as part of the proposed decision in  
21 this proceeding, direct respondent to pay to the Board all  
22 reasonable costs of investigation and prosecution, including, but  
23 not limited to, attorney's fees.

24  
25  
26 WHEREFORE, complainant requests that the Board hold a  
27 hearing on the matters alleged herein, and that following the

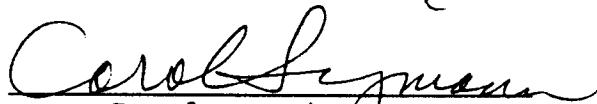
1 hearing, the Board issue a decision:

2 1. Revoking, suspending, or otherwise imposing discipline  
3 upon Certified Public Accountant Certificate Number 47066 issued  
4 to respondent Lynell R. Colbert;

5 2. Awarding the Board costs as provided by statute; and

6 3. Taking such other and further action as the  
7 Board deems proper.

8 DATED: *February 2, 1998*

9  
10   
11 Carol B. Sigmann  
12 Executive Officer  
13 Board of Accountancy  
Department of Consumer Affairs  
State of California,  
Complainant

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